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**In the
Supreme Court of the United States**

OCTOBER TERM, A. D. 1944

MARTIN KAHNER,

Petitioner,

vs.

STATE OF MINNESOTA,

Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE UNITED STATES**

To the Honorable, the Chief Justice, and the Associate
Justices of the Supreme Court of the United States:

Your petitioner, Martin Kahner, by his counsel, respectfully shows:

**SUMMARY STATEMENT OF THE MATTER
INVOLVED**

On October 20, 1942, the Grand Jury of Hennepin County at Minneapolis, Minnesota, returned an indictment against one Jacob Garon, an attorney, and Martin Kahner, the petitioner in this case, charging in the said indictment, that Jacob Garon and this petitioner, wilfully, wrongfully and unlawfully attempted to prevent and dissuade one Eugene Goulet from appearing as a

witness before the said Municipal Court in the city of Minneapolis, Minnesota, and from attending, pursuant to a certain subpoena.

Eugene Goulet had on October 11, 1942, been arrested in the city of Minneapolis for being drunk. Upon his appearance in court the next day with his attorney, he plead guilty to the charge of drunkenness and was fined \$5.00 by the magistrate here in the case. Upon being questioned as to his age, he said that he was twenty years old, and based upon that statement, the magistrate ordered that a complaint be issued against the Minnesota Tavern Corporation, wherein it was claimed that Eugene Goulet had purchased three glasses of 3.2 beer.

A complaint was duly issued on the 12th day of October, 1942, against the Minnesota Tavern Corporation for selling beer to a minor and said corporation plead not guilty to the charge and trial was set for October 27th. It was in this case that a subpoena was issued for Goulet to appear as a State witness and testify against the Minnesota Tavern Corporation. The corporation was duly tried on or about the 27th day of October, 1942, and was found not guilty of the charge. The Judge who tried the case asserted in his order that Goulet being the only State's witness and the Judge not believing Goulet's testimony, found for the defendant.

The State claims that it was in this case on or about the 14th day of October, 1942, before the case was tried, that Garon and this appellant attempted to dissuade Eugene Goulet from appearing as a witness in the case.

On October 21, 1942, this petitioner was arraigned on this charge and plead not guilty, reserving the right to move to quash the indictment or to demur to same. Defendant Garon was not arraigned, having taken his own life before he could be arraigned.

Immediately after this plea had been entered by your petitioner, to-wit: on or about the 27th day of October, 1942, counsel for this petitioner discovered for the first time that Eugene Goulet, the complaining witness in the case, and the only witness against this defendant, upon whose sole testimony against this defendant, the Grand Jury predicated its indictment, was in fact an insane person, having been adjudicated insane through judicial proceedings had before his Honor Judge William M. Erickson, Judge of Probate Court of Goodhue County, Minnesota, on June 11, 1942. As a result of this adjudication, the said Eugene Goulet was on the 12th day of June, 1942, committed to the insane asylum at Rochester, Minnesota, where he remained until September 12, 1942. On the 12th day of September, 1942, he was temporarily paroled to his parents at their home in Minneapolis, Minnesota. At the time of his temporary release on September 12, 1942, he was still insane, not having been restored to his mental capacity.

Our Minnesota Statutes provide that when a person is no longer insane, and can prove his sanity, that he then may through proper legal procedure be restored to legal mental capacity. This was never done in this case and up until the very trial in the case, which trial started February 4, 1943, this defendant was still insane under the adjudication of the court as mentioned above, and was never restored to mental capacity.

As soon as counsel for your petitioner discovered the fact that this complaining witness, and only witness against this petitioner, was an insane person, he immediately moved the court, by written motion and exhibits to set aside and quash this indictment on the ground that the said indictment was illegal, and said indictment being based solely and entirely upon the incompetent

and illegal testimony of an insane person, was contrary to the rights of this defendant as guaranteed by the Constitution of the United States, more specifically Article V of the Constitution of the United States, providing that, "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury." Also that this indictment being based entirely upon incompetent and illegal testimony, is contrary to the Fourteenth Amendment of the Constitution of the United States in that it deprived this petitioner of his liberty without due process of law. Later on in this petition and in the brief attached hereto, we shall point out to this Honorable Court, both the State and Federal decisions that uphold our Constitution, and that the Federal question involved herein goes to the very existence of our liberty under the United States Constitution.

For the enlightenment of this Court, we are herewith setting out in full the motion and copy of the exhibits that we presented to the lower court in our move to quash and set aside the indictment. The motion was as follows:

"State of Minnesota,
County of Hennepin.

District Court,
Fourth Judicial District.

State of Minnesota,

Plaintiff,

vs.

Martin Kahner,

Defendant.

Affidavit.

State of Minnesota,

ss.

County of Hennepin.

Robert Greenberg, being duly sworn upon oath deposes and says that he is attorney for defendant

Martin Kahner in the above entitled action; that as such attorney he is preparing and making this motion to quash and dismiss the indictment against the above named defendant on the grounds and for the reason that the State's whole case is predicated on the testimony of one Eugene Goulet, who it appears has been adjudicated insane and has never been restored to mental capacity, and is, therefore, incompetent to testify before the Grand Jury who returned this indictment.

Affiant further states that the Grand Jury can only predicate an indictment upon legal and competent evidence and that an indictment based on the testimony of Eugene Goulet, an incompetent person, adjudicated insane by the Probate Court of Goodhue County, Minnesota, is illegal because his testimony is incompetent and said Eugene Goulet is incompetent as a witness.

Affiant further states that he was present in the Municipal Court of the city of Minneapolis, county of Hennepin, state of Minnesota, on the 27th day of October, 1942, and that he heard the testimony given by the said Eugene Goulet before the Hon. Paul W. Guilford, one of the judges thereof, and that the said Eugene Goulet, among other things, testified that he was the Eugene Goulet who was committed to the State Hospital for Mental Diseases at Rochester, Minnesota, by the Probate Court of Goodhue County, Minnesota, as shown by the transcript of his testimony hereto attached and made a part hereof.

Affiant has been further informed that the said Eugene Goulet testified in Municipal Court of the city of Minneapolis, Hennepin County, Minnesota, on the 27th day of October, 1942, before the Hon. Paul W. Guilford, one of the Judges thereof, that he is the same Eugene Goulet who was subpoenaed, sworn and testified before the Grand Jury of Henne-

pin County, Minnesota, upon which this indictment and this motion is predicated.

Further affiant saith not.

Robert Greenberg.

Subscribed and sworn to before me this.....
day of....., 1942.

(Notarial Seal)

Agnes Burington,
Notary Public,
Hennepin County, Minn.

My commission expires June 16, 1946."

"State of Minnesota,
County of Hennepin.

District Court,
Fourth Judicial District.

State of Minnesota,

Plaintiff,

vs.

Martin Kahner,

Defendant.

Notice of Motion and Special Appearance.

To Frank Williams, county attorney of Hennepin County, Minnesota, and William G. Compton, assistant county attorney of Hennepin County, Minnesota, attorneys for the plaintiff:

You will please take notice that the defendant, Martin Kahner, in the above entitled action, through his attorney, Robert Greenberg, Esq., appears

specially and moves that this Court quash and dismiss the above entitled action against the defendant herein on the ground and for the reason that it appears from said indictment that the complaining witness, on which the State of Minnesota predicates its case, Eugene Goulet, appeared before the Grand Jury on the 20th day of October, 1942, and it further appears from said indictment that said Eugene Goulet swore to the truthfulness of his said testimony before the Grand Jury, and it further appears that he was a witness before said Grand Jury.

1. It further appears that at the time the said Eugene Goulet was subpoenaed and appeared as a witness before said Grand Jury and was sworn to testify before said Grand Jury on the 20th day of October, 1942, that he, the said Eugene Goulet, had been adjudicated an insane person by the Probate Court of Goodhue County by the Hon. Wm. M. Erickson, Judge of said Court, on the 12th day of June, 1942, and that thereafter and on said date the said Eugene Goulet, the person named in said Grand Jury indictment, who was sworn and appeared as a witness before said Grand Jury, was delivered to the Superintendent of the Minnesota State Hospital for Mental Diseases at Rochester, Minnesota, as shown by Defendant's Exhibit 1 hereto attached and made a part of this motion.

2. That it further appears that since his adjudication as an insane person by said Probate Court of Goodhue County, Minnesota, no petition or hearing for restoration of mental capacity of said Eugene Goulet has been filed, held or is now pending, and the said Eugene Goulet is still legally adjudicated insane as shown by Defendant's Exhibit 1, sworn statement of Hon. Wm. M. Erickson, Judge of Probate Court of Goodhue County, Minnesota.

3. That the said Eugene Goulet has recently been found insane by the Probate Court of Goodhue County and that it appears from the examination

that his phsyscosis is increasing as shown by said report of examination made of him by said examining board appointed by said Hon. Wm. M. Ericson, Judge of said Court.

4. That by reason of the fact that said Eugene Goulet was recently adjudicated insane by the Probate Court of Goodhue County, Minnesota, and for the further reason that he has not been restored to mental capacity, said Eugene Goulet is not a proper or competent person to take an oath and appear as a witness and give testimony before the Grand Jury of this county or any other county.

5. It is further shown by report of examination by the examining board consisting of two competent and legally practicing physicians appointed by the Hon. Wm. M. Ericson, Judge of the Probate Court of Goodhue County, Minnesota, for the examination of said Eugene Goulet, that on said date of examination, namely, June 12, 1942, the said Eugene Goulet had since 1937 "heard voices"-and had a description for each different voice.

That by reason of same he is mentally incompetent to distinguish right from wrong and therefore disqualified as a competent witness to appear before the said Grand Jury.

6. That by reason of his recent adjudication of insanity by the Probate Court of Goodhue County, Minnesota, and for the further reason that he has never been restored to mental capacity, and for the further reason that the adjudication is of such recent date he, the said Eugene Goulet, upon whom the case at bar against the defendant is predicated, was not competent and did not have the legal capacity to be sworn as a witness and give testimony before the Grand Jury of Hennepin County, Minnesota, or of any other county.

7. That by reason of the fact that the said Eugene Goulet having been recently adjudicated insane and by the further fact that he has not been restored to mental capacity, this Court is without jurisdiction to try said action based and predicated by the sworn testimony of said Eugene Goulet.

8. That on the 27th day of October, 1942, the said Eugene Goulet appeared as a witness in the Municipal Court of said city of Minneapolis, Minnesota, and attempted to give testimony as to his competency as shown by Defendant's Exhibit 2, and that one Margaret McIntyre, a case worker from the State Division of Social Security, likewise testified as to his mental competency as shown by Defendant's Exhibit 2, same being a transcript of the testimony of said Eugene Goulet and Margaret McIntyre, and made a part hereof.

This motion is based upon all the files and records of the District Court of Hennepin County, Minnesota, and certified copies of complaint in insanity, the examination in insanity, commitment and letter of Superintendent of State Hospital for Mental Diseases at Rochester, Minnesota, letter from Hon. Wm. M. Ericson, Judge of Probate Court of Goodhue County, Minnesota, and on the certified record of court reporter of the Hon. Paul W. Guilford, one of the judges of Municipal Court of the city of Minneapolis, county of Hennepin, state of Minnesota, hereto attached and made a part hereof.

Dated....., 1942.

Robert Greenberg,
Attorney for Defendant,
1028 Northwestern Bank Bldg.,
Minneapolis, Minnesota.

Copy

No. 1724 — Petition Insanity, Inebriety, Feeble-Mindedness BC 1A Japs Olson Co.
Minneapolis—Class 2.

State of Minnesota,

ss.

In Probate Court.

County of Goodhue.

In the Matter of the Alleged Insanity
of Eugene Goulet,

To the Honorable Wm. M. Ericson, Probate Judge of
said County:

Your petitioner, the undersigned, Carl J. Jackson, respectfully represents to the Court and alleges that Eugene Goulet in said County:

(c) is of unsound mind; that such unsoundness of mind does not consist merely of such mental deficiency as renders him incapable of managing himself and his affairs and to require supervision, control and care for his own or the public welfare.

That your petitioner is related to said above named person as follows:

Superintendent Minnesota State Training School.

That the indications of insanity manifested by him are as follows: (Here give fully the symptoms on which the charge of.....is based)

goes into tantrums which requires holding, etc., tries to strike.

That the said alleged insane person will not appear in said Court voluntarily, and that it will be necessary to issue a warrant to bring.....before the Court.

Your petitioner states on information and belief as follows:

That said Eugene Goulet was born in Minneapolis; is about 19 years of age and the parent of no children.

That his residence and place of legal settlement is Hennepin County, Minnesota. (If not a resident of Minnesota, set out as fully as possible where he came from, how long.....has been in this State and in the County.)

46th and D Street—Robbinsdale, Minnesota.

That.....restraint has been employed.

That the supposed cause of insanity is injury in youth.

That patient has been treated by Dr. R. B. Graves.

That said person is the owner of and entitled to the following described property: None.

Wherefore, your petitioner prays that the above named Court will make due inquiry into the matter, and to that end that said alleged insane person may be brought into said Court and examined as to said alleged insanity, and if found to be insane that he be sent to a State Hospital in accordance with the statutes in such case made and provided.

C. J. Jackson.

State of Minnesota,

ss.

County of Goodhue.

Carl J. Jackson, being first duly sworn, deposes and says that he is the petitioner in the foregoing petition; and he knows the contents thereof, and

that the averments of said petition are true of his own knowledge, save as to such as are therein stated on information and belief, and that as to those he believes them to be true.

Carl J. Jackson.

Subscribed and sworn to before me this 11th day of June, 1942.

Wm. M. Ericson,
Probate Judge.

(Seal of Probate Court, Goodhue County, Minn.)

File No. 11220.

Copy

Poucher, Minneapolis

No. 404—Form 233A

State of Minnesota,

ss.

County of Goodhue.

In the Matter of the Insanity of
Eugene Goulet.

1. (a) Date of birth 12-23-22.
 (b) Place of birth Minneapolis, Minn.
 (c) Single X Married....Widowed....Divorced.....
 (d) Number of children X.
 (e) Date of birth of youngest child X.
2. (a) Legal settlement at Robbinsdale, County of Hennepin, State of Minnesota.
 (b) Resident of Minnesota since birth.
 (c) Resident of Hennepin County since birth.
3. (a) Occupation Inmate State Training School.
 (b) Education 11th grade.
4. Religion Catholic.

5. Patient is entitled to care in an institution of the U. S. in Minnesota.
6. (a) Name of patient's father is Joseph Goulet.
 (b) Place of birth of patient's father Canada.
 (c) Maiden name of patient's mother Maria Ladue.
 (d) Place of birth of patient's mother Minnesota.
7. Patient's parents were not related to each other as first cousins.
8. The patient was committed by.....County Probate Court on.....1.....to.....State Hospital.
9. Date of onset and present symptoms of this psychosis. Since 1937 he has heard voices, has a description for each different voice.

 Gets spells with frothing at mouth, some twitching and then becomes violent. Remains unconscious for some time.
10. Psychosis appears to be increasing—decreasing—stationery. Increasing.
11. (a) The patient has not injured or threatened others.
 (b) The patient has never attempted or threatened suicide except by None on or about.....
 (c) Propensity to suicide is not present now.
12. (a) The patient has no filthy habits.
 (b) The patient is not destructive.
13. (a) The patient's father was not psychotic.
 (b) The patient's mother was not psychotic.
 (c) The following relatives of the patient were psychotic None.

14. Prior to the psychosis there were no peculiarities of personality reactions except None.
15. (a) The patient has been intemperate in the use of alcohol or habit forming drugs as follows: none.
 (b) The patient's parents have been intemperate in the use of alcohol or habit-forming drugs as follows: None.
16. The patient has had no epilepsy: yes convulsions; none skull fracture; no syphilis; no other serious diseases.
17. (a) The patient has been confined in hospital _____ Minnesota for _____ days.
 (b) The patient is suffering from no acute disease other than insanity except None.
 (c) The patient's temperature is normal, pulse normal.
18. (a) Name and address of patient's spouse—nearest kindred — friend, Joseph Goulet, 46th and D Sts., Robbinsdale, Minn.
 (b) Name and address of patient's family physician None.
19. Names of material witnesses at examination
 C. J. Jackson
 C. W. Swedenburg
 School Records

From an examination of the patient and upon the evidence adduced at the examination we find the above named patient to be insane.

R. B. Graves, M.D.
 S. H. Anderson, M.D.
 Wm. M. Ericson, Probate Judge.

Dated June 12th, 1942.
 (Probate Court Seal, Goodhue County, Minn.)

Copy.

No. 409 Warrant of Commitment and Superintendent's Receipt
Pouchers, Mpls.

State of Minnesota,

ss.

In Probate Court

County of Goodhue.

In the Matter of the Insanity
of Eugene Goulet.

To the Sheriff of Goodhue County, Minnesota, and
the Superintendent of the State Hospital, Rochester,
Minnesota.

The above named patient having been found to be
insane, the said sheriff is commanded to convey and
deliver such patient forthwith to the Superintendent
of the State Hospital at Rochester, Minnesota, and
the said Superintendent is commanded to receive
and detain such patient in said hospital according
to law.

Dated this 12th day of June, 1942.

Wm. M. Ericson,
Probate Judge.

(Probate Court Seal, Goodhue County, Minnesota.)

Receipt of Superintendent.

Receipt of the above named patient, a duplicate
of this warrant, and a certified copy of the report of
examination are hereby acknowledged.

Dated this 12 day of June, 1942.

Dr. B. F. Smith,
Superintendent.
per C. W. White, M.D.

(Receipt on original copy only.)

File No. 11220.

Endorsed—Filed this 15th day of June, 1942—Wm. M. Ericson, Judge of Probate. Recorded in Book 69 of Insanity Records, page 283.

Copy
Division of Public Institutions,
Carl H. Swanson, Director,
St. Paul, Minnesota.

Rochester State Hospital
Dr. B. F. Smith, Superintendent
Rochester, Minnesota.

July 28, 1942.

Hon. Wm. M. Ericson,
Judge of Probate,
Red Wing, Minnesota.

Dear Sir:

Eugene Goulet, Robbinsdale, Minnesota, committed from Goodhue County, June 12, 1942, was paroled to his father, Joseph C. Goulet, Robbinsdale, Minnesota, July 26, 1942.

Yours very truly,

B. F. Smith,
Medical Superintendent.

cl.

Copy

Wm. M. Ericson, Judge

Al G. Rehder, Clerk

Probate Court

Goodhue County—Red Wing, Minnesota

State of Minnesota,
County of Goodhue.

In Probate Court

In the Matter of the Insanity of
Eugene Goulet.

I, Wm. M. Ericson, Probate Judge of Goodhue County, Minnesota, do hereby certify that, regarding the above matter of Eugene Goulet, who was committed to the Rochester State Hospital on June 12th, 1942, as an insane person, there has been no proceeding or action stated in the above named Court relative to restoration to capacity.

Dated and done at Red Wing, Goodhue County, Minnesota, this 27th day of October, 1942.

By the Court:

Wm. M. Ericson,
Probate Judge.

(Backing Page)

State of Minnesota
County of Hennepin

District Court
Fourth Judicial District

State of Minnesota,
Plaintiff.

vs.

Martin Kahner,
Defendant.

Notice of Motion and
Special Appearance

Service of the within is
hereby admitted this 4th
day of Nov., 1942.

Allen L. Rorem,
Asst. Co. Atty.

To be heard Monday
9 A. M., Nov. 9, '42.

Time allowed to file Briefs

Robert Greenberg,
Attorney at Law,
1028 N. W. Bank Bldg.,
Minneapolis, Minn."

The above motion came on for argument before his
Honor Judge Luther Youngdahl on the 9th day of No-
vember, 1942, and our motion to quash and set aside the
indictment was denied. The following is a copy of Judge
Youngdahl's order:

"State of Minnesota,	District Court,
County of Hennepin.	Fourth Judicial District.

State of Minnesota,	Plaintiff,
vs.	
Martin Kahner,	Defendant.

Order. No. 37853.

A motion to quash the indictment in the above
matter came on for hearing before the undersigned,

one of the judges of the above named court, on the 9th day of November, 1942.

Robert Greenberg appeared in behalf of the defendant; and William Gunn, assistant county attorney, appeared in behalf of the State.

After hearing the arguments of counsel, and upon the briefs submitted, and upon all the files and proceedings herein,

It is ordered that said motion be and the same is hereby in all things denied.

Dated November 10, 1942:

By the Court:

Luther Youngdahl,
Judge.

Memorandum.

Although the authorities are not entirely harmonious, the general rule is that the Court will not quash an indictment for the reason that the grand jury received improper evidence or examined incompetent witnesses. (31 Corpus Juris on Indictment and Information, Section 385, page 808.)

This rule has been adopted by our Court in State vs. Marshall, 140 page 363.

Let this memorandum be made a part of the foregoing order.

Luther Youngdahl.

Filed Nov. 10, 1942.

Geo. H. Hemperley, Clerk.

By S. B. Reamer, Deputy."

As this Court can see from the above order, Judge Youngdahl was clearly of the opinion that the testimony of Goulet was wholly incompetent, but it was his further contention that the names of other witnesses appeared on the indictment, whose testimony may have been competent, and therefore he was presented with the proposition of law where a Grand Jury receives both competent and incompetent testimony and therefore under some authorities in such a case where a grand jury receives both competent and incompetent testimony, the indictment will be allowed to stand.

It was our contention before Judge Youngdahl that the other witness, listed in the indictment knew nothing of the facts in this case and testified only as to technical matters, and we offered to show what each one would have testified to, as they testified in the case in Municipal Court, but the Judge held that under the decision of our Supreme Court, such testimony of witnesses before a Grand Jury is of a confidential nature and could not be disclosed, and left the question as to whether or not there was any other competent testimony before the Grand Jury to be decided by the trial judge at the time of the trial before a Court and Petit Jury.

In numerous other states in the union the rule is otherwise. See, for example, the leading case of

Royce v. Territory, 5 Okla. 61, 47 Pac. 1083,

which was also a case where the defendant being indicted of the crime of embezzlement, filed his motion in said case to set aside and quash said indictment on the ground that the said indictment was based solely upon incompetent testimony, and for an order to take testimony thereon. The lower court refused to make such an order, or set a date for taking testimony and allowed the indictment to stand. Upon the trial of the case, the defendant

was convicted and he appealed to the Supreme Court of the State of Oklahoma. The Supreme Court of Oklahoma in the above case, reversing the lower court said on page 65 as follows:

"At the common law, an indictment is invalid and may be quashed when it is found and returned by a grand jury not legally constituted or where there was no legal evidence before the grand jury, upon what it was based; and this invalidity might be shown upon a plea of abatement. The proceedings of a grand jury cannot ordinarily be disclosed; but the rule is not to be carried to the extent of obstructing justice or creating wrong and hardship. A Court may inquire into the evidence upon which a grand jury has found an indictment and if such evidence is plainly illegal and incompetent should quash the indictment."

The Court here quoted the following cases supporting its decision:

People v. Restenblatt, 1 Abb. P. 268;
Rice on Evidence, 411;
Bishop on Criminal Procedure, Sec. 764;
State v. Grade, 12 Mo. App. 361;
U. S. v. Kilpatrick, 16 Fed. Rep. 765.

In our brief attached to this petition we shall review in detail for this Honorable Court the above decision.

The above Court further said on page 69:

"We think the motion and application to take testimony presented a right to be heard upon the motion showing the invalidity of the indictment, that it was a substantial right of the defendant to be allowed to establish facts stated in such motion for the purpose of showing that he was about to be tried without due process of law.

"The importance of the proposition involved may be appreciated when it is considered that the defendant had no other way to have the question presented to the attention of the Court or considered by it; as under our statutes, it could not be presented either upon a motion for new trial or upon a motion in arrest of judgment. (The same is true under the statute of the state of Minnesota, as we shall point out hereafter in our brief attached to this petition.) Hence if it be not substantial error for a trial court to summarily overrule a motion to set aside and quash an indictment, based upon the grounds stated in this motion, and to arbitrarily refuse to comply with the statutes and permit the defendant to produce evidence showing its invalidity, then the **constitutional right** of one accused of crime may be taken from him and he may be held to answer to a capital or otherwise infamous crime without a presentment or indictment of a grand jury. The constitution in guaranteeing this right to persons accused of crime did not mean a mere form of indictment, but meant a valid indictment found and presented in accordance with the ancient and just rules and safeguards of law, provided for the organization, action and conduct of grand juries."

After the lower court denied our motion as mentioned above, a date was set for trial of this case and the case was tried commencing on February 4th and was concluded on February 16, 1943. At the trial the defendant waived a jury and the case was tried by his Honor Judge Selover without a jury.

At the very beginning of the trial we again renewed our motion to quash the indictment on the ground that it was based entirely upon the illegal and incompetent testimony of an insane person, but this motion was again denied by the trial court.

We then proceeded to trial of the case upon the merits and upon conclusion of the State's case, after all of the

witnesses for the State had testified in the case, and that included every witness who was listed in the indictment who had appeared before the Grand Jury, we again renewed our motion to quash the indictment and dismiss the case on the grounds that the indictment was based wholly upon illegal and incompetent testimony, to-wit: the testimony of a duly adjudicated insane person.

For the information of this Court, in order that it may have a thorough and clear understanding of the important details involved in this motion, we shall here list the names of the witnesses as listed in the indictment and a concise summary of their testimony before the trial court. The witnesses were as follows:

1. Earl Howard
2. Charles Budd
3. Mrs. Dorothy Goulet
4. Eugene Goulet
5. Joseph Hadley
6. R. Peterson
7. Russell S. Ackerman
8. C. F. Comstock.

The above are all the witnesses who had appeared before the Grand Jury and upon whose testimony the indictment was predicated against the defendant. Each of the above witnesses testified as follows:

"1. Earl Howard is a deputy clerk in this court and had something to do with the issuing of the complaint, but he wasn't called to testify in this case.

2. Charles Budd is a deputy sheriff who testified that he served the subpoena on the father. Joseph Goulet is the father and the court will recall his testimony very clearly to the effect that he never saw this defendant until he saw him in the courtroom during the first or second day of the trial.

3. Mrs. Dorothy Goulet is the mother of Eugene and the wife of Joseph and she wasn't called in this case. No doubt had she been called, she would merely have in some respects corroborated Joseph's and Eugene's testimony as to the visit to her house of Mr. Garon and Mr. Buckley on the 14th day of October.

4. Eugene Goulet, of course, is the complaining witness, and we contend that he was the only one who testified before the grand jury as to a transaction of any kind whatsoever with this defendant.

5. Joseph Hadley is the assistant city attorney and the court will recall very vividly that he testified as to the statements taken from Eugene Goulet, and further that Mr. Hadley specifically testified that he had no dealings whatsoever with Mr. Kahner in reference to this case.

6. R. Peterson was not called in this case, but we know that he is the deputy in the register of deeds office who merely testified to the fact that the Minnesota Tavern Corporation is a corporation. We might state for the benefit of the court that we are familiar with this very fact because Mr. Peterson was called as a witness in the Palms case, tried before Judge Guilford, and he there testified that the Minnesota Tavern Corporation is a corporation and records so show in the register of deeds' office.

7. Russell S. Ackerman testified to the effect that a liquor license was duly issued from his office to the Minnesota Tavern Corporation and the court will no doubt recall that in the application, the officers of the corporation are set out and defendant's name was not in any way mentioned or did he appear to be in any way connected with the said corporation.

8. E. F. Comstock testified, as the record shows that he saw this defendant and Eugene Goulet come

out of Mr. Garon's office in the Midland Bank Building, get into an elevator, and in the elevator he overheard a conversation to the effect that this defendant asked Eugene Goulet whether he wanted a ride home, and if so, he would give him a ride home in defendant's car, that when they got downstairs outside the building Comstock took Goulet by the arm down towards the court house."

With the above established facts before this Court as a basis for quashing and setting aside the indictment, is there any question in the mind of this Court but that the indictment was based entirely upon the testimony of Eugene Goulet, who was an insane person, and therefore said indictment was invalid, contrary to the statutes of the state of Minnesota, contrary to Article V of the Constitution of the United States and contrary to the Fourteenth Amendment of the United States Constitution, and being obtained wholly without due process of law, and having so been obtained, deprived this defendant of his rights and liberty so guaranteed by the United States Constitution.

In our brief hereinafter attached to this petition, we shall point out more in detail the statutes of the state of Minnesota which deal with the kind of evidence that may be presented before a Grand Jury for them to consider before issuing an indictment.

Upon conclusion of the trial, the lower court found this defendant guilty of the charge set out in the indictment and sentenced him to six months in the county jail of Hennepin County, said sentence being the maximum sentence under our statutes.

After this sentence, defendant was granted a stay for the purpose of making a motion for a new trial, and in case such motion was denied, the stay was to continue, for the purpose of giving this defendant an opportunity

to appeal to the Supreme Court of the State of Minnesota.

In proper time defendant did make a motion for a new trial setting out numerous assignments of error that occurred at the trial and among such assignments set out as one of the grounds of error the fact that this Court erred in not quashing and in not setting indictment aside, same being based wholly upon illegal and incompetent testimony.

Among our numerous assignments of error, there were two concerning the validity of the indictment which were as follows:

Assignment of Error III (R. p. 386):

"That the Court erred in denying this defendant's motion to quash the indictment made after the opening statement of Mr. Larson, on the ground, as shown by defendant in his motion, that this indictment was illegal and was obtained solely upon the testimony of an insane person, and being so obtained, the said indictment was obtained without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States of America, contrary to the Constitution of the state of Minnesota, and contrary to the statutes of the state of Minnesota in such case made and provided."

And Assignment of Error XXIII (Subd. t of printed record, pages 415, 416), which was as follows:

"The Court further erred, when upon the closing of the State's case, the Court denied the following motion made by counsel for defendant:

Mr. Hughes: I think I am going to make some motions—at this time the defendant desires to renew his motion to quash and set aside the indictment, upon the ground that it now clearly appears that said indictment is based entirely upon incompetent testimony, to-wit: the testimony of Eugene Goulet, who was, and as a matter of fact still is, adjudicated

an insane person and was so at the time the testimony before the grand jury was given, and he now is at the present time.

(Argument.)

Mr. Hughes: We again at this time renew our motion to set this indictment aside; we move to quash same upon the ground—

Mr. Larson: I think the court has ruled—

Mr. Hughes: I would like to have the court rule on the motion to quash.

The Court: I have already ruled, and I think I will adhere to it; the motion to quash, is denied."

The motion for new trial was duly argued on August, 1943, and on August 28, 1943, his Honor Judge Selover denied said motion for new trial and defendant then perfected his appeal from said order to the Supreme Court of the State of Minnesota.

In our appeal to the Supreme Court of the State of Minnesota we again set out in our brief all the assignments of error as set out in the lower court and amongst them great stress was laid upon assignment of error III mentioned hereinabove on page 26 of this petition, and assignment of error XXIII mentioned on page 26, both assignments dealing specifically with the validity of the indictment and with the fact that said indictment was obtained in violation of the right of this defendant under Article V of the Constitution of the United States and in violation of the Fourteenth Amendment of the Constitution of the United States.

The matter came on to be heard before the Supreme Court of the State of Minnesota on the 17th day of April, 1944, and on the 16th day of June, 1944, the Supreme Court of our State filed its written opinion affirming the trial court in its holdings.

We felt aggrieved at the conclusions reached by our Supreme Court in its opinion, as we shall hereinafter

point out in our brief hereto attached, and we desire to state at this particular time that in its written opinion the Supreme Court of the State of Minnesota wholly ignored the very important question squarely and specifically presented to it for its determination, namely, whether an indictment based solely and entirely upon illegal and incompetent testimony of an insane witness may be allowed to stand in a court of justice, in contravention of the constitutional rights and liberty of a defendant, who is brought to trial under such a defective indictment.

In dealing with the validity of an indictment based wholly upon incompetent evidence presented before a grand jury, namely the testimony of an insane person, who is declared incompetent as such a witness by our statutes, our Supreme Court said in its opinion, par. 2, page 7, as follows:

"We shall assume, without so deciding that the motion to quash the indictment properly raises the question that it was based upon the claimed to be incompetent evidence of Goulet."

And in the very next statement following the above sentence, wherein it is clearly admitted by our Supreme Court that Goulet's testimony was incompetent, they refuse to state or commit themselves as to whether such incompetency will invalidate an indictment. Instead of dealing squarely with the question before it, they wholly ignore it and also ignore the rights that this defendant or any other defendant has under the Constitution, to-wit: to be tried only upon an indictment that is based on legal and competent evidence only.

Following the above statement as to the motion to quash made in the lower court, our Supreme Court says as follows:

"The question of his competency was properly raised at the trial. Under Minn. St. 1941, Section 595.02(6), (Mason St. 1927, Section 9814[6]), 'persons of unsound mind' are incompetent as witnesses. In order to constitute grounds for excluding the witness' testimony, the mental incompetency must exist at the time he is offered as a witness. The determination of the competency of a witness is for the trial court. Where the competency of a witness is challenged upon the ground of unsoundness of mind, the trial court should, as it did here, conduct a preliminary inquiry to enable it to determine the fact of the witness' competency."

The question before the Supreme Court of Minnesota with reference to the motion to quash is not the mental condition of Goulet at the time of the trial of this case but his condition long before the trial of the case, to-wit: at the time he was offered by the county attorney as a witness before the Grand Jury on October 20, 1942. On that day the undisputed fact is, by legal adjudication and by the Supreme Court's admission, that Goulet was a duly adjudicated insane person. The records attached to the motion are conclusive, as to this.

When Goulet was taken before the Grand Jury of Hennepin County to testify as to whatever dealing he may have had with this defendant, he was before such jury as an adjudicated insane individual. Before being taken into the Grand Jury room to testify, he was examined by no one as to whether he understood the value of an oath or could distinguish between right and wrong. These facts stand admitted and undisputed. So for all purposes, we have an insane man before a Grand Jury, his testimony being wholly incompetent and illegal both by statute and common law, and the rights and liberties of a citizen are attempted to be deprived through a trial based upon such an indictment.

With our above statement, our Supreme Court agrees, for they said at the bottom of page 8 as follows:

"His competency (meaning Goulet) as a witness depended upon his mental capacity at the time that he was offered as such."

What was his mental capacity when he was offered as such witness before the Grand Jury? The documents attached to the motion to quash, and which documents were before the Supreme Court of the State of Minnesota, and which documents are set out in this petition, speak for themselves.

In the eyes of the law and in the eyes of the world, the witness Goulet was an insane person, and consequently an incompetent person to testify before the Grand Jury.

THE REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

There are special and very important reasons why a review on a writ of certiorari should be granted in the sound discretion of the Court. In addition to the facts and argument submitted in our petition and brief, we urge further:

That the question presented to the Court herein is of utmost importance to every liberty-loving citizen who loves and respects our Constitution; and such question has never been decided by our Supreme Court.

That the State Supreme Court of Minnesota has decided a federal constitutional question of substance in a way not in accord with the applicable decisions of this Court.

Wherefore your petitioner prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Supreme Court of the State of Minnesota, commanding that Court to certify and send

to this Court for its review and determination a full and complete transcript of the record and all proceedings in the said Supreme Court had in the case numbered and entitled in its docket—33675.

State of Minnesota vs. Jacob Garon and Martin Kahner to the end that the decision and judgment of said Supreme Court of the State of Minnesota may be reviewed and reversed by this Honorable Court and that judgment may be entered on behalf of this petitioner.

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